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No. 90-1799

In the Supreme Court of the United States

OCTOBER TERM 1990

DONALD PRUESSMAN, individually and on behalf of others similarly situated,

Petitioners,

vs.

PARKER LEE McDONALD; LEANDER J. SHAW, JR.; ROSEMARY BARKETT; STEPHEN H. GRIMES; GERALD KOGAN; JOSEPH NESBITT; DANIEL PEARSON; THOMAS BARKDULL; HERBERT M. KLEIN, BERNARD JAFFE; THOMAS G. O'CONNELL; JOSEPH J. GERSTEN; RICHARD BRINKER; H. BERMAN; M ERICE; DONNA CATTELL; AMALIA CONDE; RAFAEL MARTINEZ; JOHN PARSONS; DENNIS SHILLEN; LESLIE McCORMICK; JACKSON F. McCOY; EVELYN MERCHANT; JULIET MURPHY; F. LAURENS BROCK; STANFORD F. DERNIS; HENRY BURNETT,

Respondents.

BRIEF OF RESPONDENTS JOHN PARSONS AND DENNIS SHILLEN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 11TH CIRCUIT

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17

QUESTION PRESENTED FOR REVIEW

WHETHER THE UNITED STATES DISTRICT COURT PROPERLY DISMISSED WITH PREJUDICE PETITIONER'S COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION WHERE THE COMPLAINT SOUGHT APPELLATE REVIEW OF A STATE COURT RULING.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	2
GROUNDS ON WHICH JURISDICTION IS INVOKED	2
STATEMENT OF THE CASE	2
ARGUMENT	4
THE DISTRICT COURT PROPERLY DISMISSED WITH PREJUDICE PETITIONER'S CLASS ACTION AS THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER PETITIONER'S CLAIMS SEEKING REVIEW AND REVERSAL OF STATE COURT RULINGS.	
CONCLUSION	12

TABLE OF AUTHORITIES

Cases	Page
Berenyi v. District Director, Immigration and Naturalization Service, 385 U.S. 630 (1967)	5
Bonner v. City of Prichard, Alabama, 661 F.2d 1206 (11th Cir. 1981)	9
Branti v. Finkel, 445 U.S. 507 (1980)	5
District of Columbia Court of Appeal v. Feldman, 430 U.S. 462 (1983)	5
Haggerty v. Succession of Clement, 749 F.2d 217 (5th Cir. 1984)	5
Hollins v. Wessel, 819 F.2d 1073 (11th Cir. 1987)	7
Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1805)	8
Neil v. Biggers, 409 U.S. 188 (1972)	5
Reynolds v. State of Georgia, 640 F.2d 702 (5th Cir. 1981)	6
Rooker v. Fidelity Trust Company, 263 U.S. 413 (1923)	5
Staley v. Ledbetter, 837 F.2d 1016 (11th Cir. 1988)	7
Williams v. Tooke, 108 F.2d 758 (5th Cir.), *cert. den.,* 311 U.S. 655 (1940)	10
Wood v. Orange County, 715 F.2d 1543 (11th Cir. 1983) *cert. den.,* 467 U.S. 1210 (1984)	10

TABLE OF AUTHORITIES—(Continued)

Other Authorities	Page
Florida Rule of Civil Procedure 1.280 (b)(1)	3
Florida Statute Section 90.503	3
28 U.S.C. Section 1254(1)	2
28 U.S.C. Section 1331	2
28 U.S.C. Section 1343	2
42 U.S.C. Section 1983	10

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Petitioners,

vs.

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BRIEF OF RESPONDENTS JOHN PARSONS AND DENNIS SHILLEN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 11TH CIRCUIT

The instant brief is filed on behalf of Respondents **JOHN PARSONS and DENNIS SHILLEN** both of whom were Defendants and Appellees below. The above-named Respondents respectfully request that this Court

deny the Petition for Writ of Certiorari, seeking review of the decision of the United States Court of Appeals for the Eleventh Circuit in this case. In that decision the Eleventh Circuit Court of Appeals affirmed the United States District Court's Final Order granting Defendants' Motions to Dismiss.

OPINIONS BELOW

The decision of the Eleventh Circuit Court of Appeals and the District Court's Final Order granting Defendants' Motions to Dismiss are reproduced at pages 2-5 of the Petitioner's Appendix.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The Court of Appeals entered the judgment which Petitioner seeks to review on December 21, 1990, and denied a petition for rehearing on February 20, 1991. This Court's jurisdiction has been invoked pursuant to 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

On August 8, 1989, Petitioner filed a class action in the United States District Court for the Southern District of Florida, alleging numerous violations of Petitioner's Civil Rights and attempting to invoke the District Court's original jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1343. While purportedly framed as a distinct action, Petitioner's federal suit arose out of a previous state court suit filed in the Eleventh Judicial Circuit in and for Dade County, Florida, in which Petitioner alleged that he had been wrongfully detained under the Florida Mental Health Act.[1] Respondents JOHN PARSONS and DENNIS SHILLEN

[1]Chapter 394, Florida Statutes

represented the City of Coral Gables, Ken Bush, R. Poor, D. Moore, and Richard J. Naue, Jr., who were Defendants in the underlying state court action.

In the course of the state court proceedings, Defendants attempted to gain discovery regarding Petitioner's past and current medical and psychological history. Petitioner filed a series of objections to Defendants' discovery attempts, asserting that the information sought was irrelevant and immaterial to the issues in the state court action and that such information was privileged pursuant to Section 90.503, Florida Statutes, which establishes a qualified psychotherapist/patient privilege.

After hearing the arguments of all of the parties involved and having considered Petitioner's objections to the discovery of his medical history, the trial court entered an order denying all of Petitioner's objections. Thereafter, Petitioner filed a Petition for Writ of Certiorari with the Florida Third District Court of Appeal, alleging that the lower court's Order was not in compliance with Rule 1.280(b)(1), Florida Rules of Civil Procedure, or Section 90.503, Florida Statutes.

The Third District Court of Appeal denied Petitioner's Petition for Writ of Certiorari and Petitioner proceeded to file a Petition for Writ of Mandamus with the Florida Supreme Court. The Florida Supreme Court denied the petition. At that point, rather than attempting to gain final review of the state court order by filing a Writ of Certiorari with this Court, Petitioner filed an action in the United States District Court for the Southern District of Florida, attempting to invoke that Court's original jurisdiction pursuant to 28 U.S.C. Sections 1331 and 1343. That action was based on the allegation that Petitioner's civil rights had been violated.

The United States District Court dismissed Petitioner's complaint with prejudice, finding that:

> The Plaintiff has wrongfully invoked this Court's original jurisdiction to entertain what is essentially a request for appellate review of the state court ruling. Therefore, the complaint in its entirety is dismissed, pursuant to Federal Rule of Civil Procedure 12(b)(1), for lack of jurisdiction over the subject matter.

Petitioner appealed the District Court's ruling to the Eleventh Circuit Court of Appeals, which affirmed the judgment of the District Court on December 21, 1990. On February 20, 1991, the Eleventh Circuit Court of Appeals denied rehearing. The instant Petition for Writ of Certiorari followed.

ARGUMENT

THE DISTRICT COURT PROPERLY DISMISSED WITH PREJUDICE PETITIONER'S CLASS ACTION AS THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER PETITIONER'S CLAIMS SEEKING REVIEW AND REVERSAL OF STATE COURT RULINGS.

Petitioner has asked this Court to exercise its discretionary jurisdiction based upon what Petitioner believes to have been an improper sanctioning by the Eleventh Circuit of the District Court's departure from the usual and accepted course of proceedings. The only question before this Court is whether, in fact, the District Court departed from the usual and accepted procedures when it dismissed Petitioner's complaint with prejudice.

The scope of this Court's jurisdiction is narrow. The District Court's purported departure from the usual and accepted course of proceedings must be clear and must be readily apparent from the lower court's rationale or result. Moreover, the Supreme Court cannot undertake to review concurrent findings of fact by two courts below in absence of very obvious and exceptional showing of error. *Branti v. Finkel*, 445 U.S. 507 (1980); *Neil v. Biggers*, 409 U.S. 188 (1972); *Berenyi v. District Director, Immigration and Naturalization Service*, 385 U.S. 630 (1967). As Respondents will demonstrate, the District Court's ruling was amply supported by the law and the facts which had been presented to the District Court.

The genesis of Petitioner's federal civil rights action was the denial by the state court of Petitioner's objections to the discovery of certain information in the course of state court proceedings. Petitioner in essence alleges that the very denial of those objections amounted to a gross violation of Petitioner's civil rights, giving rise to Petitioner's underlying federal civil rights claims. However, in order to consider the propriety and merits of Petitioner's purported civil rights claims, the District Court would necessarily have had to have considered the propriety of the denial of Petitioner's objections to the requested discovery in the original state court action. Thus, the District Court clearly would have been required to review the actions of the state court.

That is precisely the result which the doctrine of original jurisdiction seeks to prevent. As was correctly noted by the District Court in its final order, even if a constitutional error was committed during the course of the state court's decision making process, Petitioner's sole recourse was to the United States Supreme Court and not to the United States District Court. *District of Columbia Court of Appeal v. Feldman*, 103 S.Ct. 1303 (1983); *Rooker v. Fidelity Trust Company*, 44 S.Ct. 149 (1923); *Haggerty v.*

Succession of Clement, 749 F.2d 217 (5th Cir. 1984); *Reynolds v. State of Georgia, 640 F.2d 702 (5th Cir. 1981).*

Petitioner relies heavily on his contention that there is no identity of parties, issues, or claims with respect to the state court action and the federal suit.

> It is difficult for this pro se Petitioner to accept the fact that the courts below could close their eyes to the fact that no state court judgment or proceeding exists involving any of the parties, issues, or claims contained in the complaint, and that no such state court judgment could ever come to fruition. (Page 23 of Petitioner's brief.)

However, this purported distinction between the state court action and the federal court action is transparent and does nothing to support Petitioner's assertion that the two actions differ in substance.

Petitioner contends that his federal civil rights action could not properly have been viewed as a revisitation of the earlier state court action, because Petitioner's federal court action named different party defendants and asserted different claims from those of the state court proceedings. While this contention may serve as convenient window dressing for Petitioner's purported civil rights claims, it entirely ignores the rationale underlying the doctrine of original jurisdiction. Taken at face value, Petitioner's assertion would mean that a party could challenge *any* ruling of a state court in a federal court merely by naming state court judges as defendants in the federal action and by asserting claims of civil rights violations stemming from adverse state courts rulings.

This is precisely the route which Petitioner took in the instant case. Nevertheless, federal district courts clearly lack

jurisdiction to hear alleged civil rights claims which essentially seek review and reversal of state court decisions. *Staley v. Ledbetter*, 837 F.2d 1016 (11th Cir. 1988); *Hollins v. Wessel*, 819 F.2d 1073 (11th Cir. 1987). Consequently, the District Court's dismissal of Petitioner's complaint for lack of subject matter jurisdiction was eminently correct.

Petitioner tries hard to dress his claims in constitutional garb, in an effort to convince this Court that Petitioner's underlying class action was improperly barred from a federal forum. Petitioner's brief literally buzzes with rousing cries of gross maltreatment of our Constitution by the lower courts. However, notwithstanding Petitioner's passionate exhortations, his brief betrays the *substance* of his claims. On pages 19–21 of his brief, Petitioner states:

> This Court has declared that one aspect of liberty protected by the Fourteenth Amendment is a right of personal privacy, or a guarantee of certain zones of privacy. That right extends to psychotherapist-patient communications and falls within a zone protected as a fundamental constitutional right. There is a substantial right of privacy that extends to psychotherapist-patient communications in a patient initiated state court civil suit.
>
> In harmony with the above propositions, Florida's legislative and judicial branches have enacted statutes and adopted rules that prescribe the manner and scope of permissible intrusion into the constitutionally protected zone of privacy, none of which permit unbridled access. (Citations omitted.)

These are precisely the issues which were raised and fully argued by the parties in the underlying state court proceedings, when Petitioner objected to the Defendants' attempts to gain discovery concerning Petitioner's medical

and psychological history. When Petitioner's objections to the discovery of his medical and psychological history were overruled by the trial court, Petitioner attempted to take his case first to the Florida Third District Court of Appeal and then to the Florida Supreme Court. In both instances Petitioner was unsuccessful.

In filing the underlying class action, Petitioner was essentially asking the United States District Court to declare the judgments of the state courts null and void, and to enjoin the Defendants in the state court action from discovering Petitioner's medical and psychological history. The District Court correctly declined to do so, since the relief which was being requested by Petitioner would necessarily have involved an exercise of the District Court's discretionary appellate jurisdiction. Similarly, Petitioner is now asking *this* Court to address precisely those issues which have already been addressed by Florida courts and which do not and cannot implicate the exercise of federal jurisdiction.

Contrary to Petitioner's assertions, the District Court's refusal to entertain Petitioner's class action did not defeat the principles laid down in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1805), but in fact reaffirmed them. As was stated by this Court in that case almost 200 years ago,

> It is the essential criterion of appellate jurisdiction, that it revises and corrects the proceedings in a cause. . . .

Marbury v. Madison, supra at 175.

Petitioner's assertion that the decision of the Eleventh Circuit Court of Appeals affirming the District Court's dismissal of Petitioner's class action constituted a departure from the usual and accepted course of proceedings is simply

unfounded. In dismissing with prejudice Petitioner's complaint, the District Court relied in part on the decision of the Fifth Circuit Court of Appeals in *Reynolds v. State of Georgia*, 640 F.2d 702 (5th Cir. 1981).[2] In *Reynolds*, the plaintiff filed a complaint in the United States District Court for the Southern District of Georgia alleging, *inter alia*, that her rights of due process had been violated by an erroneous and unpredictable decision of the Georgia Supreme Court, and that actions by the Supreme Court of Georgia had denied her procedural due process and a trial by jury. Plaintiff asked the District Court to declare that the state court rulings had deprived her of her property in violation of the United States Constitution. Plaintiff also sought a permanent injunction, enjoining the defendants from implementing or taking advantage of the state court judgments and declaring those judgments to be null and void.

The District Court in *Reynolds* rejected plaintiff's contention that she had stated a new and distinct claim based upon the "injury" which had allegedly been caused by the state court decisions. The federal court concluded that the plaintiff was seeking a form of appellate relief which was beyond the jurisdiction of the District Court.

> [T]he fact that an arbitrary judgment of a state court may abridge the Constitution does not necessarily mean that such a judgment gives rise to a *claim* for violation of Constitutional and Civil Rights in Federal District Court. If to review such a judgment for Constitutional violations of that character is essentially an exercise of appellate jurisdiction, a Federal District Court, whose

[2]Decisions of the United States Court of Appeals for the Fifth Circuit handed down by that court prior to September 30, 1981 are binding as precedent on Eleventh Circuit Court of Appeals. *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206 (11th Cir. 1981).

> jurisdiction is strictly original, has no power to entertain such a suit.

Reynolds, supra, at 705.

In *Staley v. Ledbetter*, 837 F.2d 1016 (11th Cir. 1988), another case relied upon by the District Court below, Staley filed a civil rights action in the United States District Court for the Southern District of Georgia pursuant to 42 U.S.C. Section 1983, challenging certain child custody determinations which had been made by the state courts. The District Court dismissed Staley's Complaint for lack of subject matter jurisdiction. The Eleventh Circuit Court of Appeals affirmed the judgment of the District Court without addressing the parties' substantive contentions, finding that the District Court lacked jurisdiction to hear a Section 1983 claim that, in essence, sought to reverse a state court child custody determination.

> Because federal review of state court decisions is entrusted solely to the Supreme Court, [the lower federal courts] may not decide federal issues that are raised in state proceedings and 'inextricably intertwined' with the state court's judgment.

Staley v. Ledbetter, supra, at 1018, citing *Wood v. Orange County*, 715 F.2d 1543, 1546 (11th Cir. 1983) *cert. den.* 467 U.S. 1210.

In *Williams v. Tooke*, 108 F.2d 758, 759 (5th Cir.), *cert. den.*, 311 U.S. 655, plaintiffs filed an action in the United States District Court charging state courts with having "deliberately, arbitrarily, capriciously and intentionally discriminated against plaintiff and refused to award them relief, which under the settled laws of the state they were entitled to. . . ." The Court of Appeals acknowledged that a judgment of a state court could be so contrary to settled

principles as to violate due process. However, the Court went on to state:

> But that does not help appellant in this case. We are dealing solely with the jurisdiction of the District Court. The purpose of this suit is clearly to seek review of the decisions of the [state] courts and the reversal of those decisions for error. The jurisdiction of the District Court is strictly original. It has no jurisdiction to reverse or modify the judgment of a state court. The errors complained of could be reviewed only by the Supreme Court.

Williams v. Tooke, supra, at 759, citing *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923).

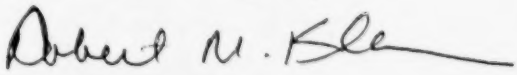
The *Williams* court concluded that "It was the duty of the District Court to dismiss the suit." *Williams, supra* at 759.

In the instant case, Petitioner sought the review and reversal of underlying state court rulings; thus, the United States District Court correctly dismissed Petitioner's suit for lack of jurisdiction. Nor did the District Court err in dismissing Petitioner's underlying class action "with prejudice." *Reynolds v. State of Georgia, supra.*

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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